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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,649	09/21/1999	ANDREW J. SZABO	SZABO-201.1	3645

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03/10/2003

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EXAMINER

RIMELL, SAMUEL G

ART UNIT

PAPER NUMBER

2175

DATE MAILED: 03/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/400,649

Applicant(s)

SZABO, ANDREW J.

Examiner

Sam Rimell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-73 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 29-73 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 6) <input type="checkbox"/> Other: |


SAM RIMELL
PRIMARY EXAMINER

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 29-73 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 29: The feature of “determining a likelihood associated with a respective record” and “statistical likelihood associated with the selected record” was not set forth in the original disclosure. While the original disclosure generically describes statistical analysis and statistical analysis of risks and benefits, there is no description of where “likelihood” is considered. Furthermore, there is no description of “likelihood” being associated with specific records.

Claim 34: The feature of “extrinsic weighting for each selected record” was not set forth in the original disclosure. While the original disclosure does discuss physical weight of a subject, “neural network weights”, “weighting a diet” and “aggressive weighting”, there is no discussion in the original disclosure of applying a weight to each record in a database of records.

Claims 44, 49, 51, 59, 60, 62 and 67: See remarks for claim 29. The feature of “likelihood” and “likelihood associated with records” is not in the original disclosure.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-31 and 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference. Note that the claimed records are the records in the in the nutritional database of Shepley.

Claims 32-34 and 36 rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of Williams III ('350).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 35 and 67-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of Ecer ('564).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 44-46, 52-59 and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 47-49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621) and Williams III ('350).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 50, 60, 65 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621) and Ecer ('564).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Remarks

Applicant has amended the claims to define the step of determining a likelihood associated with a specific record and using statistical likelihoods associated with records. Examiner finds these amendments are not supported by the original disclosure.

Applicant argues that these features are taught in the original disclosure, and cites page 19, lines 14-15 and page 22, lines 5-8.

However, the citation on page 19, lines 14-15 is a general discussion of user acceptance of diet. There is no mention of actually determining or calculating a likelihood, or associating the determined likelihoods with records in a database. Similarly, page 22, lines 5-8 states that a user is "likely to find comfort". Again, there is no determination or calculation of a likelihood being discussed, or an association between the likelihood and a record in a database.

Examiner maintains the findings of new matter as set forth herein.

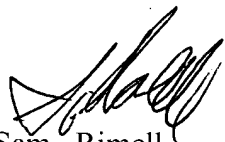
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.



Sam Rimell
Primary Examiner
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